

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

IN RE:	§	
	§	
J & J SOIL SERVICES, INC.	§	CASE NO. 14-90333
xx-xxx8510	§	
695 FM 228, Grapeland, TX 75844	§	CHAPTER 7
	§	
Debtor	§	

**TRUSTEE'S APPLICATION TO EMPLOY AUCTIONEER,
ROSEN SYSTEMS, UNDER 11 USC SECTION 327
TO SELL TANGIBLE PERSONAL PROPERTY**

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Comes now, MICHAEL J. McNALLY (“Trustee”), the duly appointed Chapter 7 Trustee in the above captioned proceeding, and files this his Application to Employ Auctioneer, Rosen Systems, (“Auctioneer”), as agent and auctioneer to the Trustee. In support hereof, the Trustee respectfully represents as follows:

1. This proceeding was commenced by the filing of a Chapter 7 on December 8, 2014, and thereafter the undersigned was appointed trustee.
2. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C.

§§ 1408 and 1409. The statutory predicate for the relief sought herein is Bankruptcy Code § 327, 363(b) and Local Rule 2014.

3. By this Application, the Trustee seeks to employ and retain the Auctioneer. The Debtor estate owns trailers, tanks, tools, inventory, equipment, office furnishings, supplies and equipment, located at 409 FM 2423, Grapeland, Houston County, Texas (the “Property”) which will be administered as part of the bankruptcy estate. Therefore, Trustee intends to administer these items by employing Rosen Systems to sell such Property free and clear of claims, liens and encumbrances, with lien claims following the proceeds.

4. Based on the Affidavit of Kyle Rosen attached hereto as Exhibit A, the Trustee believes that the Auctioneer is a “disinterested person” and that Rosen Systems has no interests which are adverse to those of the estate.

5. Rosen Systems is on the list of approved auctioneers maintained by the U.S. Trustee and subscribes to the blanket bond arranged by the U.S. Trustee. Rosen Systems is familiar with the U.S. Trustee’s Guidelines for the Conduct of Auction Sales.

6. The proposed compensation for the Auctioneer for items sold by Auctioneer will be actual expenses (which are estimated to be \$4,550.00) plus a 15% buyer’s premium. Trustee and Auctioneer plan to act quickly and conclude the sale of the Property by the end of March, 2015.

7. The Trustee requests the Court to authorize the Auctioneer to sell the Property at public auction (including, but not limited to, an internet auction) or private treaty and to retain the 15% buyer’s premium after collection. A full accounting of the items sold and sums collected as a buyer’s premium will be included in the Trustee’s report of sale, together with an itemization of expenses claimed, in the Auctioneer’s application for approval of final compensation. Rosen Systems understands that its final compensation and reimbursement of expenses will be determined

by the Court upon appropriate application.

8. Pursuant to Local Rule 2014, the Trustee provides the following notice:

Petition Date: December 8, 2014

Chapter: Chapter 7

Contact: Kyle Rosen, 2323 Langford St, Dallas, TX 75208;
Kyler@rosensystems.com, phone: 972-248-2266

Other Professionals: McNally & Patrick, LLP, Attorneys for Trustee
Gollob, Morgan & Peddy, CPA's (pending)
Nancy Lawrence, realtor (pending)

9. The Trustee is aware of lien claims of Grapeland State Bank and the Houston County Tax Assessor. Trustee proposes to pay to such creditors the net proceeds of the sale of the Property upon which each hold valid and properly perfected security interest (the "Collateral") up to the full amount of allowed claims due each such creditor at the conclusion of the normal estate administration process. The net proceeds of the sale are expected to substantially exceed the amount of such allowed claims.

10. The Trustee further requests the Court to authorize the Auctioneer to sell the Property on the following terms and conditions:

- a. Cash.
- b. "As is, where is".
- c. Trustee makes no warranties of any kind.
- d. Lien claims will follow net proceeds and be paid upon submission and approval of a proper proof of claim as set forth above. Any liens for ad valorem personal property taxes shall be treated as follows: that any ad valorem personal property tax liens attach to the proceeds of the sale in the same priority that they attached to the Property and will be paid in the ordinary course of administration upon submission and approval of proper proof of claim.
- e. Assignment will convey all right, title and interest of the Trustee herein, free and clear of all liens, claims and encumbrances without warranty.

WHEREFORE, the Trustee respectfully requests that the Court enter an order authorizing him to employ Rosen Systems to sell the Property, that Rosen Systems be authorized to sell the Property upon the terms and conditions set forth herein by commercially reasonable procedure as may be established by Rosen Systems and Trustee, that Trustee be directed to hold the sales proceeds pending further order of the Court, and for such other and further relief as is just.

Respectfully submitted,

McNALLY & PATRICK L.L.P.

By: /s/ Michael J. McNally
SBN 13815700
100 E. Ferguson, Suite 400
Tyler, TX 75702
Phone: 903-597-6301
Fax: 903-597-6302

Attorneys for Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served by either electronic means or first class mail, postage prepaid on the Debtor, J & J Soil Services, Inc. 695 FM 228, Grapeland, TX 75844, the Debtor's attorney, Stephen J. Zayler, PO Box 150743, Lufkin, TX 75915, Kyle Rosen, Rosen Systems Inc., 2323 Langford St., Dallas, TX 75208, Attorney for Grapeland State Bank, Daniel Frank Dean, Daniel F. Dean, P. C., 603 E. Lacy St., Palestine, TX 75801-2965, Attorney for Houston CAD, John P. Dillman, PO BOX 3064, Houston, TX 77253-3064, the U. S. Trustee, 110 N. College, Suite 300, Tyler, TX 75702, and the attached mailing matrix, on February 3, 2015.

/s/ Michael J. McNally